

2005 DRAFTING REQUEST

Bill

Received: **06/29/2005**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **John Townsend (608) 266-3156**

By/Representing: **John Flynn (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Townsend@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Railroad chapters revision

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 07/07/2005	lkunkel 07/07/2005		_____			S&L
/1			rschluet 07/07/2005	_____	lemery 07/07/2005	lnorthro 07/25/2005	

FE Sent For:

<END>

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/?	agary	1 lmk 7/7					
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1 lmk 7/7

FFS

FE Sent For:

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Gary, Aaron

From: Flynn, John
Sent: Wednesday, June 29, 2005 3:17 PM
To: Gary, Aaron
Subject: RE: Drafting Request - Redraft of LRB-2511 with modifications

I'll send a draft via inter-D.

-----Original Message-----

From: Gary, Aaron
Sent: Wednesday, June 29, 2005 3:16 PM
To: Flynn, John
Subject: RE: Drafting Request - Redraft of LRB-2511 with modifications

Thanks John. Unfortunately, it is still an unintroduced draft and considered confidential by our office. There are two options for moving forward - I need either:

1. the original requester of LRB-2511 to notify me that Rep. Townsend is authorized to use the bill
- OR
2. for you to send me (by e-mail or by inter-D mail) a copy of the entire draft of LRB-2511 (which I can then use as the base).

This is strict LRB policy, and I apologize for any inconvenience. I will go ahead and enter the request when I receive one of these.

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Flynn, John
Sent: Wednesday, June 29, 2005 3:06 PM
To: Gary, Aaron
Subject: RE: Drafting Request - Redraft of LRB-2511 with modifications

Aaron

I can't say we are taking over the draft. It is our understanding that Sen. Kanavas is "sitting on" the original draft, and that there is a desire to move forward with a modernization bill. I would like a new lrb number assigned to the draft for Rep. Townsend.

I hope this helps.

John

-----Original Message-----

From: Gary, Aaron
Sent: Wednesday, June 29, 2005 2:58 PM
To: Flynn, John
Subject: RE: Drafting Request - Redraft of LRB-2511 with modifications

John,

Is Rep. Townsend taking over this draft?

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Flynn, John
Sent: Wednesday, June 29, 2005 2:56 PM
To: Gary, Aaron
Cc: 'samgratz@tds.net'
Subject: Drafting Request - Redraft of LRB-2511 with modifications

Aaron:

Please redraft lrb-2511 (originally drafted for Sen. Kanavas). Remove the repeal of the 2-person train crew. On page 17 of the draft, Section 27, this would remove 192.25 from the list of repealed statutes. Then, on page 7 of the analysis, this would also remove 5.

Feel free to contact me with questions or comments. Thanks.

John Flynn, Legislative Assistant
Office of Rep. John Townsend
Phone: 266-3156



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Toll-Free: (888) 529-0052
Rep.Townsend@legis.state.wi.us

Aaron —

per your request

52nd District:
297 Roosevelt Street
Fond du Lac, WI 54935
(920) 923-0935

JOHN TOWNSEND *J. T.*

STATE REPRESENTATIVE • 52ND DISTRICT

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2511/P1dn
ARG:lmk:rs

June 1, 2005

ATTN: Jeremey Shepherd

Please review the attached draft carefully to ensure that it is consistent with your intent. The memo provided with the drafting instructions suggests that DOT, OCR, and the railroad industry form a working group to accomplish the purposes of this draft. I believe this is a very good suggestion. As we discussed by telephone, the attached draft is similar in scope and complexity to the town highways recodification accomplished last session by the joint legislative council study committee, which required many months of effort by committee members with expertise in the field. While Attorney Douglas Wood at OCR provided me with information that has been very helpful in preparing the attached draft, I lack the expertise and real-world experience in this area necessary for me to feel comfortable drafting this type of bill without significant participation by those with knowledge of the industry.

Under federal law, the jurisdiction of the federal Surface Transportation Board (STB) is exclusive as to certain operational aspects of rail carriers on interstate rail networks. Federal law preempts state law with respect to many railroad operations, even those that might appear to be intrastate only. In addition, federal law preempts state law with regard to most railroad safety matters. While certain aspects of railroad regulation are clearly preempted under federal law, other aspects are not as clear. In the attached draft, I have undertaken to repeal those provisions of state law that seem to be preempted by federal law. However, preemption decisions are made on a case-by-case basis, and until a court with jurisdiction that includes Wisconsin (such as the 7th Circuit Court of Appeals) renders a decision, there may be uncertainty as to whether a Wisconsin statute is actually preempted. In addition, there may be situations where Wisconsin statutes are mostly preempted but some part of the statute or some application of the statute is not preempted. For example, while s. 192.25, stats., relating to two-person train crews appears to fall within the scope of federal preemption, the 7th Circuit Court of Appeals recognized the potential that the statute may not be entirely preempted. In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the federal court of appeals held that the requirements of s. 192.25 (prohibiting any railroad train or locomotive from operating in this state unless the crew consists of at least two qualified persons and describing these qualified persons) are preempted by federal law except to the extent that the statute requires a train crew of at least two persons for over-the-road train operation

Copy
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From
John Flynn

(hauling train cars between terminals). The court noted, however, that the statute's requirement of a train crew of at least two persons for over-the-road train operation may also be preempted if the Federal Railroad Administration (FRA) enters into an agreement with a railroad that expressly permits the railroad to conduct over-the-road train operation with a one-person crew. As you can see, determining whether or to what degree a state statute is preempted by federal law can be a complex and speculative matter. As another example, courts in other jurisdictions have found that state law or local regulations imposing limits on how long a train can block a highway crossing are preempted under federal law, and the FRA has developed regulations on sounding train horns at crossings, but I am unaware of any Wisconsin case specifically holding that ss. 192.29 (3) and (4) and 192.292 (related to these issues) are preempted.

I believe that a number of provisions in ch. 190, and most provisions of ch. 191, would be preempted for some railroads but not for other railroads. For example, under s. 190.02 (6), I believe that OCR authority over track crossings between railroads would generally be preempted, but may not be preempted if the railroad is a private carrier or the tracks are not part of the interstate rail network. Similarly, provisions relating to acquisitions of railroads, railroad line extensions, railroad consolidation, and wreck clearance under ss. 190.025, 190.051, 190.06, and 190.085 may be preempted in some situations but not in other situations. Similarly, I believe that much of ch. 191, relating to construction of railroads, is preempted by federal law to the extent the railroad is a common or contract carrier and operates on the national rail network, but there may be situations where these railroad construction provisions are not preempted. I have addressed these issues by creating a general provision in ch. 190 (s. 190.005) and by amending s. 191.01 (1) to provide that chs. 190 and 191 do not apply to the extent they are inconsistent with federal law. However, a general provision like this does not provide much guidance to the reader of the statute as to what is actually regulated. If you would like more specific modifications to these chapters, I will need assistance from those familiar with the industry.

Section 195.39, stats., may be read to cover the issue of preemption throughout chs. 190 to 195. However, the phrasing of s. 195.39 is not consistent with existing standards, as state regulation of railroads is preempted not only for operations *in* interstate commerce, but for operations *affecting* interstate commerce and operations, even though intrastate, that occur on tracks connected to the interstate rail network. In addition, the placement of s. 195.39 is obscure. I have accordingly eliminated s. 195.39 as it relates to chs. 190, 191, 192, and 195 and replaced it with a provision in each chapter: created s. 190.005, amended s. 191.01 (1), created s. 192.005, and created s. 195.02 (4m). (Although the repeal also affects ch. 194, relating to motor carriers, I have not renumbered and amended the provision to apply to ch. 194 because ch. 194 already contains an analogous provision. See s. 194.03, stats.)

For the most part, I believe that s. 192.31 is preempted by federal law, but there could be circumstances where it might apply to a railroad not under the jurisdiction of the STB. While I have included treatment of s. 192.53 relating to horizontal clearance in the draft, this provision may fall under the jurisdiction of the FRA and may therefore be preempted. I am unfamiliar with the safety "block system" referenced in s. 195.26

and, for this reason, I have left the provision in the draft for now (with some changes). However, I suspect this provision probably falls within the exclusive authority of the FRA.

The term "railroad" is used a few times in ch. 196. Its current definition under s. 196.01 (6) may be construed to include a water carrier. However, the use of the term in ch. 196 suggests that it is intended to include only a railroad as the term is currently defined under s. 195.02 (1), not a "railroad" (water carrier) under s. 195.02 (5). Accordingly, the definition of "railroad" under s. 196.01 (6) has not been changed to correspond with the change in definitions under s. 195.02. The same is true with respect to s. 84.06 (4). However, I have treated s. 706.09 (3) (a).

I do not know the reason for the cross-references to ss. 195.05 and 195.10 appearing in s. 197.10 (4), but the provisions of ss. 195.05 and 195.10 do not appear to be relevant in the context of s. 197.10 (4), even more so in light of the amendments to ss. 195.05 and 195.10 in the attached draft. I have accordingly stricken these cross-references.

Additional provisions outside of chs. 189 to 192 and 195 may be of interest. The following provisions may be outdated or preempted to a limited degree, but are not treated in the attached draft: ss. 61.44, 66.0727, 66.0729, 66.0801 (2), 85.09, 86.12, 86.22, 182.031, and 182.36, stats.

As evident from the attached draft, many of the statutes in chs. 189 to 192 and 195 originate from long ago; they are often difficult to read and confusing and do not reflect current drafting style. Nonetheless, I have not made very many stylistic changes to the provisions treated in the attached draft for fear of making unintended substantive changes. Please let me know if you want this draft to also modernize the style of these statutes, which would of-itself be a time-consuming undertaking.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Soon

3278/1

LRB-2511/P1

ARG:lmkirs

trap

in 7/7

R M N R

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Copy Received from John Flynn

Editors: only changes are on pp. 7-8 and 17

ReGen

D-note

1 **AN ACT to repeal** 26.20 (2), (3), (10) and (11), 190.16 (1), (3) and (4), 192.14,
2 192.15, 192.18, 192.25, 192.255, 192.266, 192.267 and 192.268, 192.29 (1) and
3 (2), 192.29 (4), 192.292, 192.324, 192.42 and 192.52, 192.55 (7), 195.05 (5) and
4 (6), 195.08 (5), 195.08 (10), 195.17, 195.19 (1), 195.19 (3), 195.22 and 195.24 and
5 195.305, 195.31 and 195.33; **to renumber and amend** 191.001, 192.31 (1) and
6 195.39; **to amend** 15.79, 15.795 (1), 20.155 (2), 25.40 (1) (f) 1., 85.01 (5), 85.08
7 (4m) (e) 5., 85.09 (3) (a), 190.02 (5), 190.025 (2) (b), 190.16 (2), 190.16 (5), 191.01
8 (1), 191.17, 191.19 (1), 191.19 (3), 192.29 (title), 192.29 (3) (title), 192.29 (3) (a),
9 192.29 (5), 192.295, 192.31 (4), 192.321, 192.33 (1), 192.53 (4) (b), 192.53 (6),
10 192.55 (6), chapter 195 (title), 195.02 (3), 195.02 (5), 195.03 (7), 195.03 (8),
11 195.03 (9), 195.03 (10), 195.03 (11), 195.03 (12), 195.03 (13), 195.03 (19), 195.04
12 (1), 195.04 (2), 195.04 (3), 195.041, 195.042, 195.043, 195.05 (title), 195.05 (1),
13 195.05 (3), 195.05 (4), 195.07 (1), 195.07 (2), 195.08 (title), 195.08 (1r), 195.08
14 (2), 195.08 (3), 195.08 (4), 195.08 (7), 195.08 (9), 195.08 (11), 195.10, 195.11,
15 195.12, 195.13, 195.14, 195.15, 195.16, 195.19 (title), 195.19 (2), 195.21, 195.26,

1 195.27, 195.286 (6) (title), 195.286 (7), 195.34, 195.35 (1), 195.36, 195.37 (title),
2 195.37 (1), 195.38, 195.50, 195.60 (title), 195.60 (1), 195.60 (2), 195.60 (3),
3 195.60 (4) (a), 195.60 (5), 197.10 (4), 201.01 (1), 201.01 (2), 201.13, 706.05 (2m)
4 (b) 2. and 706.09 (3) (a); and **to create** 182.018 (4), 189.02 (2m), 190.005,
5 191.001 (2), 191.001 (3), 192.005, 192.145, 195.02 (4m), 195.04 (1m) and 195.28
6 (5) of the statutes; **relating to:** repealing provisions that may be inconsistent
7 with federal law of, and modernizing, chapters 189 to 192 and 195 and other
8 provisions related to railroad regulation and providing a penalty.

Analysis by the Legislative Reference Bureau

Under federal law, the jurisdiction of various federal agencies is exclusive as to certain operational aspects of rail carriers on interstate rail networks and as to certain aspects of railroad safety. Federal law preempts state law with respect to these matters, even when the activity appears confined to this state. This bill repeals many provisions of state law that may be inconsistent with federal law and also modernizes certain provisions of state law.

FEDERAL REGULATION OF RAILROADS

Federal economic regulation of rail carriers began in the United States with the Interstate Commerce Act of 1887, which created the Interstate Commerce Commission (ICC) to administer the regulation of railroad rates and practices. The ICC was later charged with additional responsibilities, including regulating railroad line construction, mergers, carrier practices, and line abandonments. The ICC also administered all federal rail safety requirements until the U.S. Department of Transportation (USDOT) was created in 1966. The Federal Railroad Safety Act of 1970 (FRSA) gave the USDOT broad powers to promote safety in all areas of railroad operations and the Federal Railroad Administration (FRA), within the USDOT, exercises primary authority over rail safety and safety standards. The Staggers Rail Act of 1980 (Staggers Act) substantially limited economic regulation of rail carriers and removed many regulatory restraints on the railroad industry, including limiting the authority of the ICC to regulate rates to certain traffic and allowing private railroad–shipper contracts in lieu of fixed tariffs. The FRSA was replaced by the Federal Railroad Safety Authorization Act of 1994 (FRSAA), the stated purpose of which is to promote safety in every area of railroad operations and reduce railroad–related accidents and incidents. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) continued economic deregulation that began under the Staggers Act, eliminating many restrictions on rail carriers, abolishing the ICC, and transferring some ICC functions to the newly created federal Surface Transportation Board (STB) to administer more limited regulatory responsibilities.

The ICCTA's significant economic deregulation of railroads applies to both interstate and intrastate rail transportation and impacts railroads not only on a federal level but also significantly preempts certain areas of state regulation of railroads. Under the ICCTA, the STB maintains exclusive jurisdiction over those aspects of rail carrier transportation related to: rail carrier rates and classifications; rail carrier operating rules and practices, including rules related to the use, control, supply, movement, and interchange of locomotives, rolling stock, and other equipment; rail carrier routes, services, and facilities; and the construction, acquisition, operation, abandonment, and discontinuance of industrial and side tracks and facilities, even if the tracks and facilities are located entirely in one state. The ICCTA specifically preempts state regulation of rail transportation with respect to these matters. The STB's jurisdiction extends to both interstate rail transportation and intrastate rail transportation that is part of the interstate rail network. The STB's jurisdiction applies to rail carriers, which means those providing common carrier railroad transportation of property or persons for compensation, and includes all related services and facilities but does not include, with certain safety exceptions, mass transit or street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. Some areas of broad and exclusive authority conferred on the STB under the ICCTA include: rail carrier corporate and facilities transactions, such as mergers and acquisitions of rail carriers and other "control" transactions, line sales, and agreements between rail carriers to use each other's tracks or facilities; freight rates for common carriers and contract carriers, including matters of rate reasonableness and rate discrimination; railroad construction and abandonment matters, including construction of new lines, the removal of rail lines from the national rail network, and the discontinuation of railroad facilities such as agency stations; access of one rail carrier across or over the tracks of another carrier or to another carrier's terminal facilities, including portions of the main-line track; and line crossing arrangements where one railroad's right-of-way physically blocks the access of another railroad to a particular shipper or destination.

The FRSA and FRSAA provide that railroad safety laws should be nationally uniform to the extent practicable, so these acts preempt state laws relating to railroad safety. Under the FRSAA, state regulation of locomotive and rolling stock equipment standards, train crews and their qualifications, train speed restrictions, restrictions on the amount of time that trains can obstruct traffic at crossings, and train horn requirements have been, or may be, found to be preempted under federal law.

The ICCTA and FRSAA do not preempt all state efforts to regulate railroads. States retain certain "police powers" despite the broad scope of exclusive federal railroad regulation. With certain exceptions, state regulation of railroad-highway crossing safety is generally not preempted. State laws are generally not preempted where they do not frustrate the federal scheme governing the construction, acquisition, or operation of railroad tracks or facilities or railroad safety and can be applied without interfering with federal law. Courts typically resolve issues of federal preemption on a fact-specific, case-by-case basis.

STATE REGULATION OF RAILROADS

In this state, the Office of Commissioner of Railroads (OCR), attached to the Public Service Commission (PSC), and the Wisconsin Department of Transportation (DOT) both have some authority over railroad operations and railroad safety in the state, but most of the state's regulatory authority over railroads resides with OCR, which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety. DOT also has certain investigative duties with respect to OCR proceedings, as well as additional responsibilities related to development of rail transportation infrastructure and use of abandoned railroad rights-of-way.

This bill repeals many provisions of state law relating to, and eliminates the authority of OCR with respect to, economic and safety regulation of railroads that may be inconsistent with, and therefore preempted by, federal law, but retains these provisions in a more limited application to water carriers. The bill also modernizes certain provisions of state law by repealing obsolete provisions and updating other provisions.

ECONOMIC REGULATION

The bill repeals the following provisions of current state law related to economic regulation of railroads, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

1. Providing OCR authority over railroad rates and charges, pricing discrimination or preferences, and adequacy of service.

2. Providing OCR authority to receive complaints that a railroad's rate, fare, charge, classification, practice, or service in connection with the railroad's transportation of persons or property is unreasonable or unjustly discriminatory or that service is inadequate, to direct DOT to investigate these complaints, and to hold hearings and order a reasonable rate, fare, charge, classification, practice, or service in lieu of that found to be unreasonable or unjustly discriminatory or inadequate. However, the bill entirely eliminates, for water carriers too, certain provisions relating to OCR's authority to apportion joint rates.

3. Requiring every railroad to furnish reasonably adequate service and facilities, and requiring the charges for the transportation of passengers or property or for any related service, including receiving, delivering, storing, or handling property, to be reasonable and just, and providing for OCR's authority to receive complaints and hold hearings on these matters and to determine if charges are unreasonable or unjustly discriminatory. However, the bill entirely eliminates, for water carriers too, certain provisions relating to OCR's authority over joint rates, fares, or charges.

4. Prohibiting rebates, concessions, or discrimination with respect to the transportation of property or any related service under which the property is transported at a rate less than the tariff rate.

5. Providing OCR authority to fix the time for filing railroad schedules (rate tariffs) and to prescribe forms for these schedules.

6. Requiring railroads to deliver to OCR copies of all contracts with other railroads or shippers that relate to the transportation of persons or property or any related service, if required by OCR.

7. Requiring all freight tariffs issued by any railroad relating to interstate traffic through this state to be filed with OCR and authorizing OCR to investigate all freight rates on interstate traffic affecting this state and, if they are excessive or discriminatory, allowing OCR to petition the ICC for relief.

8. Authorizing OCR to prescribe rules related to charges and operations of public elevators and warehouses on railroad grounds, and related to the furnishing of cars to shippers, the moving, loading or unloading, and weighing of cars and freight, and the testing of railroad weights and scales.

9. Requiring a common carrier receiving property for intrastate transportation to issue a bill of lading, making the carrier liable for loss of or injury to the property, and giving rights to the holder of the bill of lading.

10. Requiring OCR to gather certain financial information from railroads and include the information in a report.

11. Authorizing OCR to direct DOT to investigate complaints that railroad charges for the transportation of property or for any related service, including storage charges, are erroneous, illegal, unusual, or exorbitant, and to hold a hearing, determine what would have been a reasonable rate or charge, and order a refund.

12. Allowing a person who ships property by railroad to, within 3 years after the delivery of the property, submit to OCR expense bills or receipts showing charges paid for the transportation so that DOT may examine them to determine the correctness of weights, rates, and charges indicated on the bills or receipts and, if OCR finds any weights, rates, or charges to be incorrect, authorizing OCR to order the railroad in error to refund any over or excessive charges paid.

Current law imposes specific requirements on the issuance of securities by public service corporations, which are defined to include railroads. OCR is authorized to control the issuance of, and impose special restrictions on, railroad corporation securities, including stock and debt instruments. OCR must approve issuance of railroad securities, may determine their number, character, purpose, and issuing value, and may impose other restrictions. The ICCTA repealed federal authority previously granted to the ICC to approve railroad issuance of securities and assumption of liabilities, although exclusive federal authority still exists with respect to certain transactions, including mergers and acquisitions, between railroads. This bill excludes railroads from the definition of public service corporation for these purposes, while retaining water carriers in the definition, thereby eliminating these specific requirements as applied to railroads.

CONSTRUCTION AND FACILITIES REGULATION

The bill repeals the following provisions of current state law related to regulation of railroad construction and facilities, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

1. Prohibiting a railroad from abandoning a station, removing a depot, or withdrawing agency service without obtaining approval from OCR.

2. Imposing requirements related to, and providing OCR authority over, industrial spur tracks. However, the bill retains OCR's authority to order removal of tracks that have been abandoned but physically remain in place.

3. Prohibiting a railroad from removing, relocating, or closing its repair and maintenance shops or terminals without the consent of OCR, after a public hearing. That consent may not be given if the removal, relocation, or closure is not in the public interest or is unreasonable or unfair to railroad employees.

4. Requiring railroads to keep and maintain adequate and suitable depots, buildings, switches, and sidetracks for freight transported by the railroads.

5. Requiring railroads to provide and maintain adequate passenger depots meeting certain standards for amenities, comfort, and hours of service.

6. Requiring multiple railroads operating in the same municipality to attempt to maintain joint passenger depots, and giving OCR authority to order railroads to construct, maintain, and operate union passenger depots.

7. Requiring railroads to provide reasonable facilities for the interchange of passenger and freight traffic, and to transfer or switch without unreasonable delay or discrimination freight or cars, between their respective lines.

8. Providing for OCR authority over the requirement that every railroad construct and maintain its tracks, bridges, and line structures in a reasonably adequate and safe manner, and for OCR to direct DOT to investigate complaints and, upon hearing, if OCR determines that any railroad track or structure is inadequate or unsafe for the operation of the railroad, to order the railroad to reconstruct or repair the inadequate or unsafe track or structure. However, the bill allows OCR to participate in federal track inspection programs, including the certification of OCR staff for track inspection under federal law. The bill also retains the current law requirement that railroads construct and maintain their tracks, bridges, and line structures in a reasonably adequate and safe manner, as well as the current law requirement that railroads adopt reasonably adequate safety measures and install, operate, and maintain reasonably adequate safety devices for the protection of life and property, but qualifies these requirements by limiting them to the extent that they are consistent with federal law.

9. Providing that, whenever a railroad proposes to cross or join its track with another railroad track, OCR must determine, after a hearing, whether the surface road of the proposed track is to be above, below or at grade of any tracks proposed to be crossed, and requiring OCR to fix the proportion of the expense of the crossing or joining to be paid, respectively, by the owners of the tracks.

10. Requiring every railroad to transport grain at current rates to an elevator, warehouse, or mill under specified circumstances.

11. Requiring railroads to allow siting of certain facilities for elevators or warehouses associated with the transportation of property by railroad, and providing OCR authority over siting, rates, and operations of these elevator and warehouse facilities.

12. Requiring railroads to, when possible and under certain conditions, furnish, without discriminating between shippers or places, suitable cars for the transportation of freight.

13. Requiring OCR to gather certain cost data related to railroad construction and railroad equipment and include the information in a report.

The bill also makes substantive modifications to modernize current law in the following ways:

1. The bill eliminates obsolete provisions related to a railroad's authority to move a highway in constructing a railroad over or across a highway.

2. Current law imposes certain specifications related to wires strung over railroads prior to August 1, 1949, and requires wires strung over any railroad on or after August 1, 1949 to be strung in such a way as to meet requirements of the Wisconsin state electrical code. The bill provides that these requirements do not apply to the extent they are inconsistent with federal law.

SAFETY REGULATION

The bill repeals the following provisions of current state law related to railroad safety, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

1. Providing for OCR review of petitions asserting that a railroad-highway crossing is dangerous to human life and that public safety requires setting a maximum train speed at the crossing, and for OCR's authority to hold a hearing and order a maximum train speed for the crossing and installation of a stop sign at the crossing.

2. Prohibiting a train conductor, engineer, or brakeman from stopping or leaving a railroad train, locomotive, or car on or across a highway crossing outside of a city for more than 10 minutes.

3. Requiring railroad trains or locomotives to sound the whistle or horn 1,320 feet from a railroad-highway grade crossing outside the limits of a municipality and to ring the engine bell continuously from that point until the crossing is reached, and allowing OCR to order that these requirements be withheld at any crossing.

4. Requiring railroad trains or locomotives to ring the engine bell continuously within 330 feet of a railroad-highway grade crossing within any city or village, and until the crossing is reached, except where gates are operated or a flagman is stationed. However, the bill recognizes the duty of railroad trains and locomotives to comply with federal law.

5. Prohibiting any railroad train or locomotive from operating in this state without a crew of at least two specified persons.

6. Imposing requirements related to the qualifications of railroad conductors and flagmen.

7. Imposing equipment and safety requirements for cabooses and engines. However, the bill requires railroads to operate and maintain their equipment and rolling stock in a reasonably adequate and safe manner consistent with federal law, and authorizes OCR to participate in federal equipment inspection programs, including the certification of OCR staff for inspection under federal law.

8. Imposing lighting requirements for track cars operated at night, visibility marking requirements for engines and cars built in this state, and windshield and canopy requirements for track cars operated in this state.

8 9. Requiring that locomotives be equipped with spark arresters meeting standards of the Department of Natural Resources (DNR), providing DNR authority to remove from service non-complying locomotives, and providing OCR authority to make determinations related to spark arresters and similar devices.

9 10. Providing for complaints to OCR, and OCR hearings and orders, concerning the safety of railroad bridges lacking walks and railings.

10 11. Providing for complaints to OCR, or action on OCR's own initiative, that a bridge erected over a stream intersecting a highway upon which a railway is constructed and operated is unsafe and dangerous to travelers and that public safety requires the repair, alteration, or reconstruction (including in a different location) of the bridge, and for OCR's authority to hold hearings and to order repair, alteration, or reconstruction of the bridge.

11 12. Requiring railroads to maintain suitable telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) wherever any part of an overhead structure is less than 23 feet above the top of a rail, except where OCR authorizes an exception. However, the bill requires telltales to the extent required under federal law and authorizes OCR, if it finds that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the STB or FRA, to order the installation of a telltale.

12 13. Requiring railroads to report to OCR all collisions, derailments, or other accidents resulting in injury to persons, equipment, or tracks, and authorizing OCR to issue rules concerning the reporting of accidents and, if public interests require, cause an investigation of any accident. However, the bill requires railroads to submit to OCR a copy of any monthly accident or injury report provided by the railroad to the applicable federal authority.

The bill also makes substantive modifications to modernize current law in the following ways:

1. The bill prohibits any person (not just a person under the age of 17, as provided under current law), other than a railroad employee, from getting on or off a moving railroad car or train.

2. Under current law, a railroad must allow a specified amount of horizontal clearance, which varies depending on the circumstances, between any building or platform and the tracks. OCR may exempt any building or platform if it finds that such an exemption is in the public interest and will not imperil life or limb. The bill allows OCR to provide such an exemption without a hearing if no objection is made after notice is given.

3. Under current law, upon petition to determine whether a public highway and railroad grade crossing protects and promotes public safety, OCR may investigate and issue an appropriate order, after a hearing or without a hearing if no objection is made. OCR must determine whether the existing warning devices at the crossing are adequate to protect and promote public safety. If OCR determines that protection is not adequate, it may order suitable crossing protection or safety devices at specific locations at the crossing. State regulation of railroad-highway crossing safety is generally not preempted, although preemption may occur if federal funds participate

in the installation of crossing warning devices and the devices are subject to the approval of the Federal Highway Administration. The bill authorizes OCR to participate in federal signal inspection programs, including the certification of office staff for signal inspection under federal law.

4. Current law requires railroads to maintain "Railroad Crossing" signs on each side of the tracks wherever their tracks cross public highways or streets. The bill modernizes terms used to refer to the "Railroad Crossing" sign, commonly known as a crossbuck sign, and requires that these signs conform with the Manual on Uniform Traffic Control Devices adopted by DOT.

The bill also creates a new provision specifically recognizing OCR's regulatory jurisdiction over railroad safety practices related to railroad equipment, facilities, rolling stock, and operations to the extent consistent with federal law, and authorizing OCR to participate in federal investigative activities necessary to enforce the federal safety regulations that apply to railroad equipment, facilities, rolling stock, and operations in this state.

ADDITIONAL PROVISIONS

The bill changes penalties for the following offenses from imposition of a fine (a criminal penalty) or incarceration or both to imposition of a forfeiture (a civil penalty):

1. Getting on or off a moving railroad car or train.
2. Horizontal clearance violations by a railroad.
3. Trespassing on a railroad.
4. Receiving a rebate, concession, or discrimination with respect to water carrier transportation of property or any related service under which the property is transported at a rate less than the tariff rate.
5. Certain offenses related to the furnishing, installation, placement, and maintenance of advance warning signs near railroad-highway grade crossings. However, the bill does not change the penalty for damaging or interfering with these signs.
6. Willfully failing to sound an engine horn at a grade crossing.

The bill makes additional modifications to current state law in the following ways:

1. Under current law, "railroad" is defined to include common carriers of property by water which operate between fixed end points. Rather than include a common carrier of property by water within the definition of a railroad, the bill removes a water carrier from this definition and defines a "water carrier" to mean a common carrier of property by water that operates between fixed end points, but not including a water carrier under common control with a railroad when transporting property for continuous carriage or shipment.

2. Under current law, no member of the PSC (to which OCR is attached) may have a financial interest in a railroad or public utility. Also, the commissioner of railroads may not have a financial interest in a railroad. This bill also prohibits any member of the PSC or the commissioner of railroads from having a financial interest in a water carrier.

3. The bill provides for OCR authority, in various circumstances where under current law OCR requests DOT to conduct an investigation, to investigate the matter itself.

4. The bill specifically provides for OCR authority to receive complaints, direct investigation by DOT, and hold a hearing on the complaint with respect to any railroad practice or activity under OCR's regulatory jurisdiction.

5. Current law provides that state laws apply to railroads in interstate commerce only to the extent permitted by the federal constitution and federal laws. The bill clarifies that all state laws relating to railroads apply only to the extent they are not contrary to or inconsistent with any federal statute or regulation, or order of an applicable federal agency, or the federal constitution.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 15.79 of the statutes is amended to read:

2 **15.79 Public service commission; creation.** There is created a public
3 service commission. No member of the commission may have a financial interest in
4 a railroad, water carrier, or public utility. If any member voluntarily becomes so
5 interested, the member's office shall become vacant. If the member involuntarily
6 becomes so interested, the member's office shall become vacant unless the member
7 divests himself or herself of the interest within a reasonable time. No commissioner
8 may serve on or under any committee of a political party. Each commissioner shall
9 hold office until a successor is appointed and qualified.

10 SECTION 2. 15.795 (1) of the statutes is amended to read:

11 **15.795 (1) OFFICE OF THE COMMISSIONER OF RAILROADS.** There is created an office
12 of the commissioner of railroads which is attached to the public service commission
13 under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the
14 commissioner of railroads. The commissioner of railroads shall have expertise in

1 railroad issues and may not have a financial interest in a railroad, as defined in s.
2 195.02 (1), or a water carrier, as defined in s. 195.02 (5). The commissioner may not
3 serve on or under any committee of a political party. The commissioner shall hold
4 office until a successor is appointed and qualified.

5 **SECTION 3.** 20.155 (2) of the statutes is amended to read:

6 20.155 (2) OFFICE OF THE COMMISSIONER OF RAILROADS. (g) *Railroad and water*
7 *carrier regulation and general program operations*. The amounts in the schedule for
8 railroad and water carrier regulation under chs. 189 to 192 and 195 and general
9 program operations of the office of the commissioner of railroads. Ninety percent of
10 all moneys received by the office under s. 195.60 or 201.10 (3) shall be credited to this
11 appropriation.

12 (m) *Railroad and water carrier regulation; federal funds*. All moneys received
13 from the federal government for the regulation of railroads and water carriers, for
14 such purposes.

15 **SECTION 4.** 25.40 (1) (f) 1. of the statutes is amended to read:

16 25.40 (1) (f) 1. Moneys received from the federal government, for the regulation
17 of railroads and water carriers, that are deposited in the general fund and credited
18 to the appropriation under s. 20.155 (2) (m).

19 **SECTION 5.** 26.20 (2), (3), (10) and (11) of the statutes are repealed.

20 **SECTION 6.** 85.01 (5) of the statutes is amended to read:

21 85.01 (5) "Railroad" means ~~a railroad as defined in s. 192.15 (2) (e)~~, a railroad
22 as defined in s. 195.02 (1) and any company, association, corporation or person
23 managing, maintaining, operating or in possession of a railroad in whole or in part
24 within this state whether as owner, contractor, lessee, mortgagee, trustee, assignee
25 or receiver.

1 **SECTION 7.** 85.08 (4m) (e) 5. of the statutes is amended to read:

2 85.08 (4m) (e) 5. An application for a loan under this paragraph may not be
3 made if an abandonment or discontinuance application is pending on the line or
4 portion of line, or the line or portion of line on which the rail property improvements
5 are located has been designated by the railroad to the ~~interstate commerce~~
6 ~~commission~~ federal surface transportation board on its system diagram map as
7 anticipated to be the subject of an abandonment or discontinuance application
8 within a 3-year period following the date of the application or the date on which the
9 loan is scheduled, unless the secretary determines that this restriction may be
10 waived for a particular application.

11 **SECTION 8.** 85.09 (3) (a) of the statutes is amended to read:

12 85.09 (3) (a) A certificate or approval of abandonment has been issued by the
13 ~~interstate commerce commission~~ federal surface transportation board or federal
14 court or any other federal or state agency having jurisdiction over the rail property.

15 **SECTION 9.** 182.018 (4) of the statutes is created to read:

16 182.018 (4) This section applies only to the extent that it is not contrary to or
17 inconsistent with 49 USC 10101 to 11908 and 20101 to 28302, 49 CFR 200 to 268,
18 700 to 850, and 1001 to 1332, or any other federal statute or regulation, or any order
19 of the federal railroad administration, surface transportation board, or other federal
20 agency or authority.

21 **SECTION 10.** 189.02 (2m) of the statutes is created to read:

22 189.02 (2m) The office shall have regulatory jurisdiction over railroad safety
23 practices related to railroad equipment, facilities, rolling stock, and operations in
24 this state to the extent consistent with federal law. The office may participate in any

1 investigative activities necessary to enforce the federal safety regulations that apply
2 to railroad equipment, facilities, rolling stock, and operations in this state.

3 **SECTION 11.** 190.005 of the statutes is created to read:

4 **190.005 Scope of chapter.** Each provision of this chapter applies only to the
5 extent that it is not contrary to or inconsistent with 49 USC 10101 to 11908 and 20101
6 to 28302, 49 CFR 200 to 268, 700 to 850, and 1001 to 1332, or any other federal statute
7 or regulation, or any order of the federal railroad administration, surface
8 transportation board, or other federal agency or authority, or the constitution of the
9 United States.

10 **SECTION 12.** 190.02 (5) of the statutes is amended to read:

11 **190.02 (5) CROSS HIGHWAYS, STREETS, STREAMS; HIGHWAY BRIDGES.** To construct its
12 railroad across, over, under, along or upon any stream, watercourse, street, highway,
13 road or canal; ~~to carry any highway, street or road which it shall intersect over or~~
14 ~~under its tracks as may be most expedient for the public good; to change the course~~
15 ~~and direction of any highway, street or road when made necessary or desirable by the~~
16 ~~construction of the railroad and acquire land necessary therefor; provided, such~~
17 ~~highway or road be not so changed from its original course more than six rods, nor~~
18 ~~its distance thereby lengthened more than five rods; and provided, further, that~~
19 every, subject to the provisions of ch. 195, if any bridge erected over any highway or
20 street shall leave leaves a clear passageway at least ~~twenty~~ 20 feet wide or ~~two~~ 2
21 passageways, each not less than ~~fourteen~~ 14 feet in width.

22 **SECTION 13.** 190.025 (2) (b) of the statutes is amended to read:

23 **190.025 (2) (b)** A railroad corporation that is subject to this subsection shall
24 have all powers conferred by law upon railroad corporations. The railroad
25 corporation may issue, sell, pledge or otherwise dispose of its evidences of debt, at

1 such times, in such amounts, for such considerations and upon such terms and
2 conditions as the board of directors of the corporation shall determine, and as shall
3 be authorized by the office, or the ~~interstate commerce commission~~ federal surface
4 transportation board in the case of a railroad corporation organized for the purpose
5 of acquiring a railroad engaged in interstate commerce, or any existing railroad
6 corporation reorganized under the act and acquiring railroad property used in
7 interstate commerce. The evidences of debt may be convertible, at the option of the
8 holder, into stock, and shares of stock. The shares may have a nominal or par value
9 or, if the shares are shares of common stock, be without nominal or par value. The
10 shares may be of such classes, with such rights and voting powers as may be
11 expressed in the corporation's articles or any amendment thereto.

12 SECTION 14. 190.16 (1), (3) and (4) of the statutes are repealed.

13 SECTION 15. 190.16 (2) of the statutes is amended to read:

14 190.16 (2) MUNICIPAL CONSENT. ~~No such~~ spur tracks shall be constructed across,
15 or upon any street, road or alley, within any city, village or town, until application
16 therefor shall have been made to and acted upon by such city, village or town. The
17 city may prescribe any reasonable terms and conditions for the construction of any
18 such spur track. Construction of spur tracks across or upon any street, road, or alley
19 is subject to the provisions of ch. 195.

20 SECTION 16. 190.16 (5) of the statutes is amended to read:

21 190.16 (5) REMOVAL, WHEN. ~~Except where a spur track was constructed prior~~
22 ~~to June 16, 1925, at the expense of the railroad company, no spur track shall be~~
23 ~~removed, dismantled or otherwise rendered unfit for service except upon order of~~
24 When a spur track has been abandoned, as defined in s. 85.09, the office made, after
25 hearing held upon notice to all parties interested, and for good cause shown; provided

1 may order the removal of the track except that, if no objection has been filed with the
2 office within 20 days from the original ~~publication of such~~ notice, the office may
3 without hearing authorize ~~such spur track removed, dismantled or otherwise~~
4 ~~rendered unfit for service~~ the removal of the track.

5 SECTION 17. 191.001 of the statutes is renumbered 191.001 (intro.) and
6 amended to read:

7 **191.001 Definition.** (intro.) In this chapter, “office”;

8 **(1) “Office”** means the office of the commissioner of railroads.

9 SECTION 18. 191.001 (2) of the statutes is created to read:

10 191.001 (2) “Rail carrier” has the meaning given in 49 USC 10102 (5).

11 SECTION 19. 191.001 (3) of the statutes is created to read:

12 191.001 (3) “Transportation” has the meaning given in 49 USC 10102 (9).

13 SECTION 20. 191.01 (1) of the statutes is amended to read:

14 191.01 (1) SCOPE OF THIS CHAPTER. This chapter applies to all railroads except
15 rail carriers providing transportation subject to the jurisdiction of the federal surface
16 transportation board under 49 USC 10501 and 10901 to 10907. Each provision of
17 this chapter applies only to the extent that it is not contrary to or inconsistent with
18 49 USC 10101 to 11908 and 20101 to 28302, 49 CFR 200 to 268, 700 to 850, and 1001
19 to 1332, or any other federal statute or regulation, or any order of the federal railroad
20 administration, surface transportation board, or other federal agency or authority,
21 or the constitution of the United States.

22 SECTION 21. 191.17 of the statutes is amended to read:

23 **191.17 Public safety; investigation; approval of plans.** Upon receiving
24 the specification required by s. 191.16, the office shall examine the same and shall
25 hear the applicant in support thereof, shall suggest and require modifications of the

1 specification if the public safety so demands, eliminating so far as may be
2 practicable, consistent with reasonable cost, all grade crossings of public highways,
3 shall inspect the route of the proposed railroad if deemed desirable, and shall
4 otherwise investigate and determine that the proposed construction will be adequate
5 for securing public safety in the operation of the railroad, and thereupon the office
6 shall enter an order approving the specification and authorizing the construction of
7 the railroad in accordance therewith and with the provisions of ch. 195.

8 **SECTION 22.** 191.19 (1) of the statutes is amended to read:

9 191.19 (1) Upon the completion of the construction of any railroad under the
10 approved specification, the company shall, before operating the same for public
11 service, report to the office; and the office shall inspect the work. If the office finds
12 that the railroad has been constructed in accordance with the approved specification
13 and with the provisions of ch. 195 and is otherwise suitable and properly constructed
14 so as to secure public safety in the operation thereof, the office shall enter an order
15 authorizing its operation, which order shall be presumptive evidence of the
16 sufficiency of such construction.

17 **SECTION 23.** 191.19 (3) of the statutes is amended to read:

18 191.19 (3) If upon inspection the office shall deem that public safety requires
19 the installation, operation and maintenance of some protective appliance at any
20 grade crossing of railroad tracks the office may, before granting the order, after notice
21 and hearing under s. 195.28, require the installation, operation and maintenance of
22 suitable protective appliances, and shall apportion the expense of constructing,
23 maintaining and operating such protective appliances among the owners of the
24 tracks.

25 **SECTION 24.** 192.005 of the statutes is created to read:

1 **192.005 Scope of chapter.** Each provision of this chapter applies only to the
2 extent that it is not contrary to or inconsistent with 49 USC 10101 to 11908 and 20101
3 to 28302, 49 CFR 200 to 268, 700 to 850, and 1001 to 1332, or any other federal statute
4 or regulation, or any order of the federal railroad administration, surface
5 transportation board, or other federal agency or authority, or the constitution of the
6 United States.

7 **SECTION 25.** 192.14 of the statutes is repealed.

8 **SECTION 26.** 192.145 of the statutes is created to read:

9 **192.145 Railroad equipment and rolling stock.** Every railroad shall
10 operate and maintain its equipment and rolling stock in a reasonably adequate and
11 safe manner consistent with federal law. The office may participate in federal
12 equipment inspection programs, including the certification of office staff for
13 equipment inspection under federal law.

14 **SECTION 27.** 192.15, 192.18, 192.25, 192.255, 192.266, 192.267 and 192.268 of
15 the statutes are repealed.

16 **SECTION 28.** 192.29 (title) of the statutes is amended to read:

17 **192.29 (title) Train speed horns and crossing signs at street and**
18 **highway crossings.**

19 **SECTION 29.** 192.29 (1) and (2) of the statutes are repealed.

20 **SECTION 30.** 192.29 (3) (title) of the statutes is amended to read:

21 192.29 (3) (title) ~~BELL TO RING~~ HORN TO SOUND, MUNICIPAL AUTHORITY.

22 **SECTION 31.** 192.29 (3) (a) of the statutes is amended to read:

23 192.29 (3) (a) No railroad train or locomotive shall run over any public traveled
24 grade crossing within any city or village, except where gates are operated, or a
25 flagman is stationed, unless the ~~engine bell shall be rung continuously within 330~~

1 ~~feet of the crossing and until the crossing is reached~~ railroad train or locomotive horn
2 is sounded in compliance with the requirements under federal law.

3 **SECTION 32.** 192.29 (4) of the statutes is repealed.

4 **SECTION 33.** 192.29 (5) of the statutes is amended to read:

5 **192.29 (5) DANGER RAILROAD-HIGHWAY CROSSING SIGNS.** Wherever its track
6 crosses a public highway or street, every railroad corporation shall maintain on each
7 side of the track ~~and near such crossing a large signboard with the following~~
8 ~~inscription, painted in large letters: "Railroad Crossing," in such manner as to be~~
9 ~~visible to approaching traffic on the highway or street at least 100 feet distant a~~
10 highway-rail-grade crossing sign, commonly known as a crossbuck sign, that
11 conforms with the manual on uniform traffic control devices adopted by the
12 department under s. 84.02 (4) (e).

13 **SECTION 34.** 192.292 of the statutes is repealed.

14 **SECTION 35.** 192.295 of the statutes is amended to read:

15 **192.295 Willful neglect of railroad employees.** Any officer, agent,
16 conductor, engineer or employee of any railroad company operating within this state
17 who willfully neglects or omits to ~~ring or cause to be rung the bell~~ sound the horn on
18 the engine of any train of cars or on an engine alone ~~or to blow the whistle~~, as required
19 by s. 192.29 (3) ~~and (4)~~, shall be imprisoned not more than 6 months or fined not
20 exceeding forfeit \$100.

21 **SECTION 36.** 192.31 (1) of the statutes is renumbered 192.31 (1) (a) and
22 amended to read:

23 **192.31 (1) (a)** ~~Every railroad corporation shall maintain suitable telltales~~
24 ~~wherever any overhead structure or any part thereof is less than 23 feet above the~~

1 ~~top of rail; Telltales shall not be required except to the extent required under federal~~
2 ~~law and except that if as provides in par. (b).~~

3 ~~(b) If the office finds that the installation of a telltale at any particular place~~
4 ~~would be impracticable or would result in an increased hazard to either the public~~
5 ~~or an employee and that either or both such factors outweigh the safety benefit which~~
6 ~~would result from the installation of a telltale, absence of a telltale would create an~~
7 ~~unreasonable risk of harm to the public or a railroad employee on a railroad not~~
8 ~~under the jurisdiction of the federal surface transportation board or federal railroad~~
9 ~~administration, the office may enter an order providing an exemption from this~~
10 ~~section. The exemption requiring the installation of a telltale. A telltale shall be~~
11 ~~ordered by the office only after public hearing according to the hearing procedure~~
12 ~~provided under sub. (4).~~

13 **SECTION 37.** 192.31 (4) of the statutes is amended to read:

14 **192.31 (4)** Upon finding that any such structure will not imperil life or limb,
15 and that the public interest requires or permits such structure to be constructed or
16 reconstructed otherwise than as permitted by sub. (3), the office may exempt such
17 structure from such provision. Such findings shall be made only upon written
18 application, setting forth fully the grounds therefor and shall be made only after
19 public hearing held upon notice to all interested parties except that, if no objection
20 is filed with the office within 20 days of the notice, the office may require the
21 installation of a telltale without hearing. The findings and order ~~granting exemption~~
22 ~~requiring the installation of a telltale~~ shall be in writing and contain complete
23 provisions and requirements as to the vertical clearance to be maintained in such
24 construction or reconstruction. Such structure shall be constructed or reconstructed
25 only in compliance with such order.